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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 STATE FARM GENERAL INSURANCE) No. [C-10-03408] EDL
13 COMPANY,)
14 Plaintiff,) **STIPULATION OF SETTLEMENT**
15 v.) **AND [PROPOSED] ORDER**
16 UNITED STATES OF AMERICA,)
17 Defendant.)

18 THE PARTIES AND THEIR ATTORNEYS OF RECORD HEREBY SUBMIT THE
19 FOLLOWING STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE
20 (hereinafter, "Stipulation and Agreement"):

21 **PREAMBLE**

22 It is hereby stipulated by and between the undersigned Plaintiff and the UNITED
23 STATES OF AMERICA, by and through their respective attorneys, as follows:

24 WHEREAS, Plaintiff filed the above-captioned action under the Federal Tort Claims Act, 28
25 U.S.C. §§ 2671 *et seq.*;

26 WHEREAS, Plaintiff and the United States of America wish to avoid any further
27 litigation and controversy and to settle and compromise fully any and all claims and issues that
28 have been raised, or could have been raised in this action, which have transpired prior to the

1 execution of this Agreement;

2 IT IS HEREBY STIPULATED AND AGREED as follows:

3 **TERMS AND CONDITIONS**

4 1. **The Parties.** The parties to this Stipulation and Agreement are plaintiff State Farm
5 General Insurance Company (hereinafter “Plaintiff”), on the one hand, and defendant United
6 States of America (“Federal Defendant”), on the other hand. Plaintiff and the United States of
7 America are collectively referred to in this Stipulation and Agreement as “the Parties” and
8 individually as a “Party.”

9 2. **Agreement to Compromise Claims.** Plaintiff and the United States hereby agree
10 to settle and compromise the above-entitled action under the terms and conditions set forth
11 herein. The parties do hereby agree to settle and compromise each and every claim of any kind,
12 whether known or unknown, arising directly or indirectly from the acts or omissions that gave
13 rise to the above-captioned action under the terms and conditions set forth in this Settlement
14 Agreement, including claims arising under 42 U.S.C. §2651, that the Federal Defendant may
15 have the against Plaintiff’s insureds Geoff Torretta, Greg Torretta, and Gary Torretta
16 (collectively, “Torrettas”), as such claims arise from the facts alleged in the state court action
17 Johnson v. Torretta, et al, Contra Costa County Superior Court Case No. MC07-02171 (“State
18 Court Action”) and any claim for contribution, subrogation and or indemnity that the Plaintiff
19 may have arising from the facts of the State Court Action against the Federal Defendant and any
20 of its agencies, assigns, past and present employees, past and present administrators or agents.

21 3. **Settlement Amount** The United States agrees to pay to Plaintiff the sum of Forty-
22 Five Thousand Dollars and No Cents (\$45,000.00) (“Settlement Amount”), made payable to
23 State Farm General Insurance Company and its attorney the Livingston Law Firm, under the
24 terms and conditions set forth herein, which sum shall be in full settlement and satisfaction of
25 any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising
26 from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and
27 personal injuries, damage to property and the consequences thereof, resulting, and to result, from
28 the same subject matter that gave rise to the above-captioned lawsuit, for which Plaintiff, its past

1 or present agents, servants, past and present employees, past and present administrators and
2 assigns, insureds, the Torrettas, and each of them, now have or may hereafter acquire against the
3 United States of America or its past or present agents, servants, past and present employees, past
4 and present administrators and assigns, or the United States Department of Veterans Affairs or its
5 past or present agents, servants, past and present employees, past and present administrators and
6 assigns.

7 4. **Dismissals:**

8 A. The parties will file a Stipulation of Dismissal with Prejudice and Proposed Order
9 in the FTCA Action.

10 B. The United States District Court for the Northern District of California agrees to
11 dismiss the district court action with prejudice.

12 5. **No admission of Liability:** This Stipulation and Agreement is not, is in no way
13 intended to be, and should not be construed as an admission of liability or fault on the part of the
14 United States, its agencies, agents, servants, or employees, and it is specifically denied that the
15 Federal Defendant is liable to the Plaintiff. This settlement is entered into by all parties for the
16 purpose of compromising disputed equitable indemnity, equitable subrogation, and/or equitable
17 contribution claims under the FTCA or state law and avoiding the expenses and risks of further
18 litigation.

19 6. **Parties Bear Their Own Costs.** It is also agreed, by and among the parties, that the
20 respective parties will each bear their own costs, fees, and expenses and that any attorney's fees
21 owed by the Plaintiff will be paid out of the Settlement Amount and not in addition thereto.

22 7. **Attorney's Fees.** It is also understood by and among the parties that pursuant to Title
23 28, United States Code, Section 2678, attorney's fees for services rendered in connection with
24 this action shall not exceed 25 per centum of the amount of the compromise settlement.

25 8. **Releases:** This settlement resolves all claims or potential claims by any party to this
26 action arising out of the facts alleged in the above-captioned action and the underlying State
27 Court Action.

28 A. Plaintiff and its agents, servants, employees, or past and present administrators

1 and assigns do hereby accept the Settlement Amount set forth above in full settlement,
2 satisfaction, and release of any and all claims, demands, rights, and causes of action of
3 whatsoever kind and nature, including any claims for pre-judgment or post-judgment interest,
4 and any claims for fees, costs, and expenses, whether incurred in the district court, the court of
5 appeals, or in any other court proceedings, arising from, and by reason of, any and all known and
6 unknown, foreseen and unforeseen, bodily and personal injuries, death, or damage to property,
7 and the consequences thereof, which the Plaintiff and its respective insureds the Torrettas,
8 agents, servants, employees or past and present administrators and assigns may have or hereafter
9 acquire against the Federal Defendant, or its agencies, agents, servants, and employees, on
10 account of the same subject matter that gave rise to the FTCA Action and/or the State Court
11 Action.

12 1. Plaintiff represents and warrants that at all times referred to in the FTCA Action
13 and State Court Action and since the time of filing said action, no other person other than
14 Plaintiff had, or has, an interest in the causes of action set forth therein and that Plaintiff has not
15 sold, assigned, transferred, conveyed or otherwise disposed of any claim or demand relating to
16 any matter covered by this Stipulation and Agreement.

17 B. The Federal Defendant and the United States Department of Veteran's Affairs,
18 agrees to waive and release any claim or cause of action (whether sounding in tort, contract,
19 statutory, or otherwise) that it has against Plaintiff, its insureds the Torrettas, and their insurers,
20 agents, servants, and employees arising out of the subject matter of the State Court Action. This
21 includes any potential claim for subrogation, contribution or indemnification arising from the
22 State Court Action and the above-captioned action. No entities other than State Farm General
23 Insurance Company, its insureds the Torrettas, and their insurers, agents, servants, and employees
24 are released from such claims by this Paragraph.

25 1. Notwithstanding any term of this Stipulation and Agreement, specifically reserved
26 and excluded from the scope and terms of this Agreement as to any entity or person (including
27 Plaintiff and the Torrettas) are the following claims of the United States and United States
28 Department of Veteran's Affairs:

1 a. Any civil, criminal, or administrative liability arising under Title 26 U.S. Code
2 (Internal Revenue Code);
3 b. Any criminal liability;
4 c. Any liability to the United States or the United States Department of Veteran's
5 Affairs for any conduct other than the conduct set forth in the complaint in the State Court Action
6 Johnson v. Torretta, et al, Contra Costa County Superior Court Case No. MC07-02171, or the
7 FTCA Action filed on August 3, 2010 U.S. District Court for Northern District of California
8 Case No. C-10-03408 EDL;
9 d. Any liability based upon such obligations as are created by this Stipulation and
10 Agreement.

11 9. **Discharge**. Plaintiff forever discharges the United States of America and any and all
12 of its agencies, past and present officials, past and present employees, past and present agents,
13 past and present attorneys, their successors and assigns, from any and all obligations, damages,
14 liabilities, actions, causes of actions, claims and demands of any kind and nature whatsoever,
15 whether suspected or unsuspected, at law or in equity, known or unknown, arising out of the
16 allegations set forth in Plaintiff's pleadings in this action.

17 10. **Statutory Waiver**.

18 The provisions of California Civil Code Section 1542 are set forth below:

19 "A general release does not extend to claims which the creditor does not know or
20 suspect to exist in his favor at the time of executing the release, which if known by
him must have materially affected his settlement with the debtor."

21 Plaintiff, having been apprised of the statutory language of Civil Code Section 1542 by its
22 attorneys, and fully understanding the same, nevertheless elect to waive the benefits of any and
23 all rights it may have pursuant to the provision of that statute and any similar provision of federal
24 law. Plaintiff understands that, if the facts concerning injuries or liability for damages pertaining
25 thereto are found hereinafter to be other than or different from the facts now believed by them to
26 be true, the Agreement shall be and remain effective notwithstanding such material difference.

27 11. **Construction**. Each party hereby stipulates that it has been represented by and has
28 relied upon independent counsel in the negotiations for the preparation of this Stipulation and

1 Agreement, that it has had the contents of the Stipulation and Agreement fully explained to it by
2 such counsel, and is fully aware of and understands all of the terms of the Stipulation and
3 Agreement and the legal consequences thereof. For purposes of construction, this Stipulation
4 and Agreement shall be deemed to have been drafted by all Parties to this Stipulation and
5 Agreement and shall not, therefore, be construed against any Party for that reason in any
6 subsequent dispute.

7 12. **Integration Clause:** This instrument shall constitute the entire Stipulation and
8 Agreement between the parties, and it is expressly understood and agreed that the Stipulation and
9 Agreement has been freely and voluntarily entered into by the parties hereto with the advice of
10 counsel, who have explained the legal effect of this Stipulation and Agreement. The parties
11 further acknowledge that no warranties or representations have been made on any subject other
12 than as set forth in this Stipulation and Agreement. This Stipulation and Agreement may not be
13 altered, modified or otherwise changed in any respect except by writing, duly executed by all of
14 the parties or their authorized representatives.

15 13. **Complete Defense:** This Stipulation and Agreement may be pled as a full and
16 complete defense to any subsequent action or other proceeding which arises out of the claims
17 released and discharged by this Stipulation and Agreement.

18 14. **Enforcement Sole Remedy:** The parties agree that, should any dispute arise with
19 respect to the implementation of the terms of this Stipulation and Agreement, Plaintiff shall not
20 seek to rescind the Stipulation and Agreement and pursue his original causes of action.
21 Plaintiff's sole remedy in such a dispute is an action to enforce the Stipulation and Agreement in
22 the appropriate court.

23 15. **Withholding.** If any withholding or income tax liability is imposed upon Plaintiff
24 based on payment of the settlement sum as set forth herein, Plaintiff shall be solely responsible
25 for paying any such liability.

26 16. **Severability.** If any provision of this Stipulation and Agreement shall be invalid,
27 illegal, or unenforceable, the validity, legality, and enforceability of the remaining provision shall
28 not in any way be affected or impaired thereby.

17. **Authority to Sign:** The signatories to this Stipulation and Agreement have actual authority to bind the parties.

18. **Multiple Signature Pages:** It is contemplated that this Stipulation and Agreement may be executed in several counterparts, with multiple signature pages. All such counterparts and signature pages, together, shall be deemed to be one document.

IT IS SO STIPULATED.

DATED: May 24, 2011

Respectfully submitted,

/s/ Sandra Watts

Sandra Watts
On behalf of Plaintiff, State Farm General
Insurance Company

CRAIG A. LIVINGSTON, ESQ.
Livingston Law Firm

/s/ Craig A. Livingston

Dated: May 24, 2011

CRAIG A. LIVINGSTON
Attorneys for the Plaintiff

MELINDA HAAG
United States Attorney

/s/ Melissa Sladden

Dated: May 24, 2011

MELISSA BROWN SLADDEN
Assistant United States Attorney

1 **[PROPOSED] ORDER**
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4 Upon stipulation of the parties and good cause appearing, IT IS SO ORDERED.
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7 DATED: June 23, 2011

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11 HONORABLE ELIZABETH D. LAPORTE
12 United States District Court Magistrate Judge
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